

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAVELERS CASUALTY AND SURETY COMPANY
as Administrator for RELIANCE INSURANCE
COMPANY,

Plaintiff,

- against -

DORMITORY AUTHORITY – STATE OF NEW
YORK, TDX CONSTRUCTION CORP., and KOHN
PEDERSEN FOX ASSOCIATES, P.C.,

Defendants.

AND THIRD AND FOURTH PARTY ACTIONS.

Case No. 07 Civ. 6915 (DLC)

**AFFIDAVIT OF
TIMOTHY B. FROESSEL
IN OPPOSITION TO
TRAVELERS' MOTION
FOR SUMMARY
JUDGMENT**

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

TIMOTHY B. FROESSEL, being duly sworn, deposes and says:

1. I am an attorney with the law firm of Holland & Knight LLP, attorneys for defendants Dormitory Authority of the State of New York ("DASNY") and TDX Construction Corp. ("TDX") in the above-captioned action.

2. I am fully familiar with the facts and circumstances stated below, and I make this affidavit in opposition to Travelers Casualty and Surety Company's ("Travelers") Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

3. On or about May 11, 2005, Travelers Casualty and Surety Company of America and Travelers Casualty and Surety Company commenced an action against Trataros Construction Inc. ("Trataros"), NPS Realty Inc., Costas N. Trataros, Joanne Trataros, and Nicos Trataros

(collectively referred to as the "Trataros Indemnitors") in the Supreme Court of the State of New York, County of New York, seeking damages for defendants' default on certain bonds, including the two bonds issued by Reliance in connection with the Baruch Project, Payment and Performance Bonds B28 80 150 and Payment and Performance Bonds B 28 80 353 (the "Travelers Indemnity Action"). A docket of Travelers Indemnity Action, Index. No. 601682/05, is included in the Supreme Court Records On-Line Library ("SCROLL") for the New York County Supreme Court. A true and correct copy of the complaint in the Travelers Indemnity Action, as it appears on SCROLL, was attached to my February 19, 2010 affidavit in support of DASNY's motion for summary judgment as Exhibit 26.

4. In the Travelers Indemnity Action, Costas N. Trataros, the President of Trataros, submitted an affidavit sworn to on June 17, 2005. A true and correct copy of that affidavit, as it appears on SCROLL, is attached hereto as **Exhibit 1**. In paragraph 3 of that affidavit, Mr. Trataros stated, "In mid-2002, TCI [Trataros] essentially went out of business and all of the projects were taken over by the plaintiffs as TCI's bonding companies. By this time, all of the projects for which Bonds were issued had gone into default and TCI had ceased performing any work."

5. In the Travelers Indemnity Action, Costas N. Trataros submitted another affidavit sworn to on November 2, 2005. A true and correct copy of that affidavit, as it appears on SCROLL, is attached hereto as **Exhibit 2**. In paragraph 6 of that affidavit, Mr. Trataros stated that Trataros "had a substantial lender liability claim against Travelers as its long term surety, based on Travelers' decision to 'pull the plug' on the Company rather than continue to fund TCI's operations."

6. On or about September 22, 2003, Premier-New York Inc. ("Premier") commenced an action in the Supreme Court of the State of New York, County of New York (the "Premier Action") against Trataros and Travelers, entitled Premier New York Inc. v. Travelers Property Casualty Corp. and Trataros Construction Inc., Index No. 603043-2003E.

7. Costas Trataros, the President of Trataros, was deposed in the Premier Action on July 14, 2005. True and correct copies of relevant pages of Mr. Trataros' deposition transcript from the Premier Action are attached hereto as **Exhibit 3**.

8. John Scarpellino, a Bond Claim Executive employed by Travelers, was deposed in this action on June 19, 2008. True and correct copies of pages of Mr. Scarpellino's deposition transcript are attached hereto as **Exhibit 4**.

9. John Scarpellino was deposed again in this action on January 29, 2009. True and correct copies of pages of Mr. Scarpellino's deposition transcript are attached hereto as **Exhibit 5**.

10. John Scarpellino was deposed a for a third day in this action on January 30, 2009. True and correct copies of pages of Mr. Scarpellino's deposition transcript are attached hereto as **Exhibit 6**.

11. Athena Curis, a former employee of Trataros, was deposed in this action on July 24, 2008. True and correct copies of pages of Ms. Curis' deposition transcript are attached hereto as **Exhibit 7**.

12. Attached hereto as **Exhibit 8** is a true and correct copy of a document produced by Travelers in discovery and marked at the June 19, 2008 deposition of John Scarpellino as DASNY Exhibit 9.

13. Attached hereto as **Exhibit 9** is a true and correct copy of a document produced by Travelers in discovery and marked at the June 19, 2008 deposition of John Scarpellino as DASNY Exhibit 11.

14. Attached hereto as **Exhibit 10** is a true and correct copy of a document produced by Travelers in discovery and marked at the June 19, 2008 deposition of John Scarpellino as DASNY Exhibit 13.

15. Attached hereto as **Exhibit 11** is a true and correct copy of a document produced by Travelers in discovery and marked at the June 19, 2008 deposition of John Scarpellino as DASNY Exhibit 14.

16. Attached hereto as **Exhibit 12** is a true and correct copy of a document produced by Travelers in discovery this action and reviewed at the January 30, 2009 deposition of John Scarpellino as DASNY Exhibit 282.

17. Attached hereto as **Exhibit 13** is a true and correct copy of a document produced by Travelers in discovery this action and reviewed at the January 30, 2009 deposition of John Scarpellino as DASNY Exhibit 285.

18. Attached hereto as **Exhibit 14** is a true and correct copy of a document produced by Travelers in discovery and marked at the January 29, 2009 deposition of John Scarpellino as DASNY Exhibit 288.

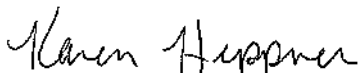
19. Attached hereto as **Exhibit 15** is a true and correct copy of a document produced by Travelers in discovery and marked at the January 29, 2009 deposition of John Scarpellino as DASNY Exhibit 289.

20. Attached hereto as **Exhibit 16** is a true and correct copy of a document produced by Travelers in discovery and marked at the January 29, 2009 deposition of John Scarpellino as DASNY Exhibit 290.

21. Attached hereto as **Exhibit 17** is a true and correct copy of a document produced by Travelers in discovery and marked at the January 30, 2009 deposition of John Scarpellino as DASNY Exhibit 294.


TIMOTHY B. FROESSEL

Sworn to before me this
19th day of March, 2010


Notary Public

KAREN HIPPNER
Notary Public, State of New York
No. 01HI6100493
Qualified in Suffolk County
Commission Expires October 20, 20 11

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